ARTICLE 14. TIMBER BUYERS, THEIR AGENTS, AND TIMBER GROWERS

Rule 1. Application and Administration

312 IAC 14-1-1 Application of article

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1-3.2

Sec. 1. (a) This article governs each of the following actions under IC 25-36.5-1 and any proceedings resulting from those actions:

(1) The issuance, suspension, or revocation of a license to act as a timber buyer or as an agent.
(2) The issuance of a notice of violation.
(3) The issuance of a civil penalty.
(4) The issuance or forfeiture of a bond.
(5) A complaint filed under IC 25-36.5-1-3.2 against a timber buyer or timber cutter.
(6) Any other action controlled by IC 25-36.5-1.

(b) This article does not govern a dispute involving a timber buyer or an agent, which is not controlled by IC 25-36.5-1, unless the doctrine of primary jurisdiction applies. *(Natural Resources Commission; 312 IAC 14-1-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2744; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-1-2 Administration

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5; IC 25-36.5-1-3.2

Sec. 2. (a) This article is administered by the division of forestry.

(b) Where this article specifically grants to the division of forestry authority to take action, the division director may delegate the authority to any employee of the division of forestry.

(c) Administrative review of a determination by the division of forestry or of a complaint filed under IC 25-36.5-1-3.2 is governed by IC 4-21.5 and 312 IAC 3-1.

(d) The commission is the ultimate authority for an action under this article. *(Natural Resources Commission; 312 IAC 14-1-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

Rule 2. Definitions

312 IAC 14-2-1 Application of definitions

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 1. The definitions in this rule apply throughout this article. *(Natural Resources Commission; 312 IAC 14-2-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-2-2 "Agent" defined

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 2. "Agent" means an individual who represents a timber buyer in effecting or attempting to effect purchases of timber. *(Natural Resources Commission; 312 IAC 14-2-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55*

a.m.: 20151028-IR-312150156RFA)

312 IAC 14-2-3 "Bond" defined
Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 3. "Bond" means a surety bond, cash, or certificate of deposit posted by a timber buyer under IC 25-36.5-1 for the use and benefit of the people of Indiana and for the use and benefit of any timber grower. *(Natural Resources Commission; 312 IAC 14-2-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-2-4 "Buying" defined
Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 4. "Buying" means acquiring an interest in property by the payment of a price, value, or other consideration. *(Natural Resources Commission; 312 IAC 14-2-4; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-2-5 "Division director" defined
Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 5. "Division director" refers to the director of the division of forestry. The division director is also sometimes referred to as the state forester. *(Natural Resources Commission; 312 IAC 14-2-5; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-2-6 "Division of forestry" defined
Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 6. "Division of forestry" refers to the division of forestry of the department. The address for the division of forestry is as follows:

Division of Forestry
Department of Natural Resources
Indiana Government Center-South
402 West Washington Street, Room W296
Indianapolis, Indiana 46204

(Natural Resources Commission; 312 IAC 14-2-6; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)

312 IAC 14-2-7 "Division of hearings" defined
Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 7. "Division of hearings" refers to the division of hearings of the commission. The address for the division of hearings

is as follows:

Division of Hearings
Natural Resources Commission
Indiana Government Center-North
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204

(Natural Resources Commission; 312 IAC 14-2-7; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; filed Mar 4, 2008, 12:31 p.m.: 20080402-IR-312070486FRA; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)

312 IAC 14-2-8 "Engaged in the business of buying timber" defined

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 8. "Engaged in the business of buying timber" means either of the following:

(1) The exertion of control over the sale of timber as demonstrated by any of the following occurrences:

(A) The purchase of timber directly or through an agent from a timber grower.

(B) The selection of which or how much timber is cut. This clause does not include a person employed by a timber grower to provide technical expertise concerning timber valuation or management.

(C) The selection of a person to act as a feller, skidder, or hauler.

(D) The direction of timber to a particular market.

(2) Negotiation with a timber grower for the right to purchase timber.

(Natural Resources Commission; 312 IAC 14-2-8; filed May 27, 1997, 3:50 p.m.: 20 IR 2745; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)

312 IAC 14-2-9 "Timber" defined

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 9. "Timber" means trees, standing or felled, and logs which can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of any article. The term does not include firewood, Christmas trees, fruit or ornamental trees, or wood products not used or to be used for building, structural, manufacturing, or processing purposes. *(Natural Resources Commission; 312 IAC 14-2-9; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-2-10 "Timber buyer" defined

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 10. "Timber buyer" means a person engaged in the business of buying timber from timber growers for sawing into lumber, processing, or resale, but does not include a person who occasionally purchases timber for sawing or processing for his own use and not for resale. *(Natural Resources Commission; 312 IAC 14-2-10; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-2-11 "Timber cutter" defined

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 11. "Timber cutter" means a person who cuts timber but who is not a timber buyer. *(Natural Resources Commission; 312 IAC 14-2-11; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-2-12 "Timber grower" defined

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 12. "Timber grower" means the owner, tenant, or operator of land in this state who has an interest in, or is entitled to receive any part of the proceeds from, the sale of timber grown in this state and includes persons exercising lawful authority to sell timber for a timber grower. *(Natural Resources Commission; 312 IAC 14-2-12; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

Rule 3. Licensing and Bonding of Timber Buyers and Agents

312 IAC 14-3-1 Licensing of timber buyer

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 1. (a) No person shall engage in the business of timber buying in this state without a registration certificate issued by the department.

(b) An application by a timber buyer for a registration certificate shall be prepared on a department form and delivered to the division of forestry. *(Natural Resources Commission; 312 IAC 14-3-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-3-2 Bonding of timber buyers

Authority: IC 25-36.5-1-3; IC 25-36.5-1-9
Affected: IC 25-36.5-1-3.5; IC 28-1-1-3

Sec. 2. (a) Every person registered as a timber buyer must file and maintain a bond with the department under IC 25-36.5-1-3.

(b) The bond required under subsection (a) may consist of any of the following:

(1) An effective surety bond issued by a corporate surety holding an applicable certificate of authority from the department of insurance, state of Indiana.

(2) Cash deposited with the division of forestry and held in an account dedicated to the purposes set forth in IC 25-36.5-1-3. Cash deposited under this subdivision shall not be returned to a timber buyer except under IC 25-36.5-1-3.5.

(3) A certificate of deposit issued by a financial institution as defined in IC 28-1-1-3. The certificate of deposit shall be held by and assigned to the department and shall not be returned to a timber buyer except under IC 25-36.5-1-3.5.

(Natural Resources Commission; 312 IAC 14-3-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)

312 IAC 14-3-3 Denial of a timber buyer registration certificate

Authority: IC 25-36.5-1-4.9; IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 3. The division of forestry may refuse to issue a timber buyer registration certificate to an applicant that has done any of the following within ten (10) years before filing the application:

(1) Been convicted of robbery, burglary, arson, forgery, fraud, or another felony by which the applicant deprived or sought to deprive another person of property by force or deception. In determining whether to refuse issuance of the registration certificate, however, the division of forestry shall consider the criminal acts of the applicant supporting the conviction as they bear upon fitness to serve as a licensed timber buyer.

(2) Violated IC 25-36.5-1.

(3) Violated this article or violated 310 IAC 23 before its repeal.

(Natural Resources Commission; 312 IAC 14-3-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2746; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)

312 IAC 14-3-4 Issuance and renewal of a timber buyer registration certificate

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3-4; IC 25-36.5-1-6

Sec. 4. (a) The division of forestry shall issue a timber registration certificate upon a determination that an applicant has complied with IC 25-36.5-1-6 and this rule.

(b) A registration is valid for a calendar year and may be renewed annually by a timber buyer. A copy of the registration certificate must be posted by the timber buyer in the principal office of the timber buyer in this state.

(c) Upon request for a certificate and payment of the fee, the division of forestry shall issue to the licensed timber buyer a copy of the certificate to evidence that a certificate of registration has been granted and a bond filed as required by IC 25-36.5-1.

(d) The issuance and renewal of a timber buyer registration certificate are governed by IC 4-21.5-3-4. *(Natural Resources Commission; 312 IAC 14-3-4; filed May 27, 1997, 3:50 p.m.: 20 IR 2747; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

Rule 4. Department Sanctions Against Timber Buyers, Agents, and Other Persons Who Violate this Article

312 IAC 14-4-1 Suspensions and revocations of licenses

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 25-36.5-1

Sec. 1. (a) The division director may file a complaint under IC 4-21.5-3-8, with the division of hearings, which seeks to suspend or revoke a timber buyer's registration certificate or an agent's license.

(b) A violation of IC 25-36.5-1 or this article must be established by the department in order to support a suspension or revocation.

(c) The suspension of a timber buyer's registration automatically suspends any agent's license issued for that registration. The revocation of a timber buyer's registration certificate automatically revokes any agent's license issued for that registration.

(d) The director or the division director may, under IC 4-21.5-4, suspend a timber buyer's registration or an agent's license if an emergency exists. *(Natural Resources Commission; 312 IAC 14-4-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2747; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-4-2 Notices of violation

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3-6; IC 25-36.5-1

Sec. 2. (a) The division of forestry may, under IC 4-21.5-3-6, issue a notice of violation against a timber buyer who violates IC 25-36.5-1 or this article.

(b) The notice of violation shall be in writing and include the following:

(1) A designation that the document is a "Notice of Violation".

(2) The name of the timber buyer against which the notice is directed and the name of any person who has provided bond for the timber buyer under this article.

(3) The nature of the violation.

(4) What action is appropriate to abates the violation.

(5) A statement that a person aggrieved by the notice of violation shall, within twenty-three (23) days of issuance, either abates the violation or request administrative review from the division of hearings. The department and the timber buyer may, however, enter an agreement by which the period for abatement is extended beyond twenty-three (23) days.

(c) If a notice of violation is issued under this section and the timber buyer neither abates the violation nor requests administrative review in a timely fashion, the department may, under 312 IAC 14-5, forfeit the bond. *(Natural Resources Commission; 312 IAC 14-4-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2747; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-4-3 Penalties

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3-8; IC 25-36.5-1

Sec. 3. (a) The division of forestry may file a complaint under IC 4-21.5-3-8, with the division of hearings, which seeks to impose a civil penalty against a person who violates IC 25-36.5-1 or this article.

(b) A civil penalty imposed under this section may not exceed the following limits:

(1) For engaging in business as a timber buyer without securing a timber buyer's registration certificate, ten thousand dollars ($10,000).

(2) For engaging as an agent of a timber buyer without holding an agent's license, ten thousand dollars ($10,000).

(3) For any other violation, one thousand dollars ($1,000).

(c) Subject to the mitigating factors described in subsection (d) and the aggravating factors described in subsection (e), the presumptive civil penalty assessed under this section is one-half (½) of the amounts for the violations described in subsection (b).

(d) Mitigating factors to be considered in assessing a civil penalty are as follows:

(1) The person assessed a civil penalty has not previously been adjudicated by the commission or a court to have violated IC 25-36.5-1 or this article.

(2) The violation appears to have been unintentional.

(3) The violation was an isolated occurrence.

(4) No timber grower has suffered harm as a result of the violation or, if harm was suffered, full restitution was tendered promptly.

(5) Significant environmental harm was not suffered as a result of the violation.

(e) Aggravating factors to be considered in assessing a civil penalty are as follows:

(1) The person assessed a civil penalty has previously been adjudicated by the commission or a court to have violated IC 25-36.5-1 or this article.

(2) The violation appears to have been intentional.

(3) A pattern of violations has occurred.

(4) A timber grower has suffered harm as a result of the violation, and full restitution for the harm has not been tendered.

(5) Significant environmental harm was suffered as a result of the violation, and the harm has not been mitigated pursuant

to a plan approved by the division director.

(Natural Resources Commission; 312 IAC 14-4-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2747; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)

Rule 5. Bond Forfeitures

312 IAC 14-5-1 Issuance of bond forfeiture

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3-6; IC 25-36.5-1

Sec. 1. The division director may, under IC 4-21.5-3-6, issue a notice of bond forfeiture for any of the following reasons:

(1) A timber buyer has failed, as determined following a completed proceeding under 312 IAC 14-6, to pay when due any amount owed to a timber grower for timber purchased.

(2) A timber buyer has failed, as determined following a completed proceeding under 312 IAC 14-6, to pay damages for timber wrongfully cut by a timber buyer or an agent.

(3) A notice of violation has been issued against a timber buyer under 312 IAC 14-4-2 and the timber buyer has failed to do either of the following:

(A) Abates the violation.

(B) Request administrative review of the notice of violation in a timely fashion. Provided, however, that the division director may forfeit bond where the opportunity for review is exhausted, and a determination is made with respect to a notice of violation which is adverse to a timber buyer.

(Natural Resources Commission; 312 IAC 14-5-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2748; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)

312 IAC 14-5-2 Notice of bond forfeiture

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1

Sec. 2. A notice of bond forfeiture shall be in writing and include the following:

(1) A designation that the document is a notice of bond forfeiture under the Indiana timber buyer's law.

(2) The name of the timber buyer secured by the bond.

(3) The basis for the bond forfeiture.

(4) A statement that the person providing the bond shall, within eighteen (18) days of issuance of the notice, either forfeit the bond to the department or request administrative review from the division of hearings.

(Natural Resources Commission; 312 IAC 14-5-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2748; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)

Rule 6. Proceedings for Timber Wrongfully Cut or for which Full Compensation is not Received by a Timber Grower

312 IAC 14-6-1 Initiation of a proceeding

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3-8; IC 25-36.5-1-3.2; IC 26-1-2

Sec. 1. (a) The division director or a timber grower may, under IC 4-21.5-3-8, file a complaint with the division of hearings against a timber buyer or a timber cutter to seek compensation under IC 25-36.5-1-3.2 and this rule.

(b) The division director or a timber grower may file a complaint only if there is reason to believe that:

(1) the timber buyer or timber cutter has acquired timber from a timber grower under a written contract for the sale of timber without payment having been made to the timber grower as specified in the contract; or

(2) if:

(A) there is no written contract for the sale of timber; or

(B) there is a written contract for the sale of timber but the contract does not set forth the purchase price for the timber;

the timber buyer or timber cutter has cut timber or acquired timber from the timber grower without payment having been made to the timber grower equal to the value of the timber as described under IC 26-1-2.

(c) The filing of a complaint under this section initiates a proceeding which is governed by IC 4-21.5 and 312 IAC 3-1. *(Natural Resources Commission; 312 IAC 14-6-1; filed May 27, 1997, 3:50 p.m.: 20 IR 2748; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-6-2 Contents of administrative complaint

Authority: IC 25-36.5-1-9
Affected: IC 25-36.5-1; IC 26-1-2

Sec. 2. (a) A complaint filed under this rule shall include the following:

(1) The name and address of the timber grower.

(2) The name and address of the timber buyer or timber cutter.

(3) An averment that the timber buyer or timber cutter:

(A) has acquired timber from the timber grower under a written contract for the sale of timber without payment having been made to the timber grower as specified in the contract; or

(B) if:

(i) there is no written contract for the sale of timber; or

(ii) there is a written contract for the sale of timber but the contract does not set forth the purchase price for the timber;

the timber buyer or timber cutter has cut timber or acquired timber from the timber grower without payment having been made to the timber grower equal to the value of the timber as determined under IC 26-1-2.

(4) A description of the location or locations where the timber was alleged to have been cut. This description shall be referenced with reasonable particularity and shall include the county or counties affected.

(5) The date or dates when the subject timber is alleged to have been cut.

(6) A claim for damages, which claim shall be limited to the following:

(A) Damages in compensation for damage actually resulting from the wrongful activities of a timber buyer or timber cutter.

(B) Damages equal to three (3) times the stumpage value of any timber that is wrongfully cut or appropriated without payment.

(b) A party may file with the division of hearings a request for a more definite statement if a complaint does not conform to the requirements of subsection (a). Where a request is made under this subsection within thirty (30) days of filing the complaint and the complaint does not conform with subsection (a), the administrative law judge shall grant the request.

(c) Upon a proper motion of a party, a complaint which does not comply with section 1 of this rule and with subsection (a) shall be dismissed by the administrative law judge. *(Natural Resources Commission; 312 IAC 14-6-2; filed May 27, 1997, 3:50 p.m.: 20 IR 2749; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-6-3 Prehearing conferences

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3-19; IC 4-21.5-3.5; IC 25-36.5-1

Sec. 3. (a) As soon as practicable after filing a complaint, an administrative law judge shall be appointed under 312 IAC 3-1 to conduct the proceeding.

(b) The administrative law judge shall schedule an initial prehearing conference to be conducted within forty-five (45) days after filing the complaint.

(c) A purpose of the initial prehearing conference is to provide the parties with an opportunity for settlement, including an opportunity for mediation under IC 4-21.5-3.5. In addition, any purpose set forth in IC 4-21.5-3-19 may be pursued.

(d) The administrative law judge may conduct any additional prehearing conference or conferences. *(Natural Resources Commission; 312 IAC 14-6-3; filed May 27, 1997, 3:50 p.m.: 20 IR 2749; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-6-4 Necessary parties; joinder; intervention

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3-21; IC 25-36.5-1-3.2

Sec. 4. (a) The necessary parties to a proceeding under this rule are:

(1) the timber grower;

(2) the timber buyer or timber cutter; and

(3) if the department under IC 25-36.5-1-3.2(b) initiated the proceeding by filing a complaint, the department.

(b) After the commencement of a proceeding under this rule, a party may move for the joinder of any of the following persons having a relationship to the site or the subject of the complaint:

(1) The person who posted bond for the timber buyer.

(2) A timber buyer.

(3) A timber cutter.

(4) A landowner.

(5) An owner of land adjacent to the land from which the timber was cut.

(6) A consultant receiving a fee for services related to the timber.

(7) A land surveyor performing a minimum standard detail survey in Indiana which conforms with IC 25-36.5-1-3.2(d)(7).

(8) The department, if the department has a relationship to the site or subject of the complaint as a landowner or owner of adjacent land.

(c) The administrative law judge may schedule a date by which a party must move for any joinder to be sought under subsection (b). The administrative law judge shall not, however, schedule a date by which joinder must be sought which is earlier than thirty (30) days after the initial prehearing conference.

(d) A person may seek to intervene in a proceeding as provided in IC 4-21.5-3-21. *(Natural Resources Commission; 312 IAC 14-6-4; filed May 27, 1997, 3:50 p.m.: 20 IR 2749; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

312 IAC 14-6-5 Hearings

Authority: IC 25-36.5-1-9
Affected: IC 4-21.5-3; IC 25-36.5-1

Sec. 5. (a) Notice of a hearing shall conform to the requirements of IC 4-21.5-3-20.

(b) In selecting the site for a hearing, the administrative law judge shall consider the convenience of the parties. Unless otherwise agreed to by the parties, a hearing site shall be located in the region where either:

(1) the majority of the parties reside or are domiciled; or

(2) the subject property is located.

(c) A hearing shall be conducted in conformance with IC 4-21.5-3-25 and IC 4-21.5-3-26. *(Natural Resources Commission; 312 IAC 14-6-5; filed May 27, 1997, 3:50 p.m.: 20 IR 2750; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090154RFA; readopted filed Sep 30, 2015, 11:55 a.m.: 20151028-IR-312150156RFA)*

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